

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

**320 W. 4th Street, Suite 200
Los Angeles, California 90013
(213) 576-6600**

**Public Notice No. 10-035
NPDES No. CAS004002**

NOTICE OF PUBLIC HEARING

**RECONSIDERATION OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION
SYSTEM PERMIT FOR THE COUNTY OF VENTURA WATERSHED PROTECTION DISTRICT,
THE COUNTY OF VENTURA, AND INCORPORATED CITIES THEREIN
(Municipal Separate Storm Sewer System)**

The County of Ventura Watershed Protection District, the County of Ventura, and the Incorporated Cities Therein (hereinafter Permittees) discharge waste from their Municipal Separate Storm Sewer Systems under waste discharge requirements, which serve as an NPDES permit, contained in Order No. 09-0057, adopted by the Los Angeles Regional Water Quality Control Board (Regional Board) on May 7, 2009 (NPDES Permit No. CAS004002).

Prior to adoption of Order No. 09-0057, via a letter dated April 10, 2009, the Permittees, Natural Resources Defense Council (NRDC), and Heal the Bay presented an agreement to the Regional Board proposing new development/redevelopment performance criteria, including on-site retention requirements, a 5% Effective Impervious Area (EIA) limitation, infeasibility criteria, a 30% EIA cap, and off-site mitigation provisions; the elimination of Municipal Action Levels (MALs); and weekly, year-round beach water quality monitoring at 10 sites (hereafter, the "Agreement"). At the Regional Board hearing on May 7, 2009, the Permittees, NRDC, and Heal the Bay reiterated their support for the Agreement and advocated that the Agreement be incorporated into the permit verbatim in its entirety. The Agreement, which was not publicly noticed or circulated for public comment prior to the hearing, was incorporated into Order No. 09-0057 at the May 7, 2009 hearing.

On June 8, 2009, the Building Industry Legal Defense Foundation, Construction Industry Coalition on Water Quality, and the Building Industry Association of Southern California, Inc. (collectively, "BIA") submitted a petition to the State Water Resources Control Board (State Water Board) seeking State Water Board review of Order No. 09-0057. On March 10, 2010, the Chief Counsel of the State Water Board requested that the Regional Board agree to voluntary remand of Order No. 09-0057 in order to address perceived procedural issues in connection with adoption of Order No. 09-0057. Specifically, the March 10 letter noted four procedural issues: (1) corrections were made to the permit after the adopted permit was circulated; (2) a significant number of documents were inadvertently omitted from the administrative record that was transmitted to the State Water Board; (3) the Regional Board in its response to the petition asked the State Water Board to correct a finding in the permit; and (4) BIA had argued that the approved version of the permit should have been recirculated prior to adoption because of alleged irregularities at the hearing. On March 11, 2010, the Regional Board agreed to voluntary remand of Order No. 09-0057 in order to address these concerns.

Accordingly, the Regional Board proposes to reconsider adoption of Order No. 09-0057 to address the perceived procedural concerns related to incorporation of the Agreement into the adopted permit. As such, the scope of this hearing is narrow, and the Regional Board will accept only limited comments and evidence as described below in Section II (Scope of Hearing).

This notice sets forth the procedures and processes the Regional Board will use at this hearing.

I. HEARING DATE AND LOCATION

The Regional Board is scheduled to hold a public hearing to consider this matter at its regularly scheduled board meeting on:

Date: July 8, 2010
Time: 9:00 a.m.
Place: Ventura County Board of Supervisors Meeting Room
800 S. Victoria Ave.
Ventura, California 93009

Please check the Regional Board's website (<http://www.waterboards.ca.gov/losangeles/>) for the most up-to-date public hearing location as it is subject to change. If there should not be a quorum on the scheduled date of this hearing, all items will be automatically continued to the next scheduled meeting. A continuance of this item will not automatically extend any deadlines set forth herein.

II. SCOPE OF HEARING

The Regional Board will consider whether to affirm Order No. 09-0057 that was previously adopted on May 7, 2009. Because the majority of the provisions of Order No. 09-0057 were previously subject to public comment, the Regional Board is providing an opportunity for parties and interested persons to comment and submit evidence only on the portions of the proposed permit that were not previously subject to a notice and comment period outside of the public hearing. These portions include provisions that incorporated the Agreement into the permit, as well as new or revised findings and evidence proposed by staff that support the incorporation of the Agreement into the permit. In a few instances, additional minor modifications are also proposed by staff to be made to the permit to correct typographical errors, or to provide greater clarification on non-Agreement related provisions. Since neither the Agreement provisions nor the staff proposed modifications to Order No. 09-0057 have previously been circulated by the Regional Board as drafts for public comment, the Regional Board is taking this opportunity to circulate them and allow an opportunity for parties and interested persons to comment and submit evidence related to them.

The Agreement provisions and all staff-proposed modifications made to the Tentative Waste Discharge Requirements and Tentative Monitoring and Reporting Programs are identified in either an underline or strikethrough format. Insertions are identified by underlining and deletions are identified by ~~strikethrough~~. Regional Board staff is also circulating a tentative Administrative Record Index for this proceeding that lists all of the new evidence relied upon by Regional Board staff in proposing these modifications, as well as several documents timely submitted by

NRDC and Heal the Bay prior to the May 7, 2009 hearing that were inadvertently omitted from the administrative record that was transmitted to the State Water Board. Any written or oral comments, or evidence, relating to reconsideration of Order No. 09-0057 are limited only to the portions of the permit identified by underline and strikeout format, and the new evidence identified in the tentative Administrative Record Index. Any comments or evidence relating to other portions of the permit that are not shown in underline or strikethrough format will not be accepted into the Administrative Record in this matter.

Parties and interested persons are also advised that, in lieu of affirming Order No. 09-0057 with staff's proposed modifications, the Regional Board may adopt the draft permit originally presented to the Regional Board at the May 7, 2009 hearing. . Since the entire original draft permit, including the provisions relating to Municipal Action Levels (MALs) and the planning and land development program and their associated supporting findings, was already subject to a full public notice and comment period, the Regional Board may choose to adopt that draft permit (or certain of its provisions). Moreover, since the entire original draft permit already received full notice and comment, the Regional Board will not accept new comments or evidence on the provisions of the original draft permit that did not change from the original staff proposal to the adopted permit, or on the provisions of the currently noticed permit that the Regional Board did not adopt (i.e., the provisions relating to MALs and the planning and land development program). The comments and evidence previously submitted for the May 7, 2009 hearing that were included in the Regional Board's May 7, 2009 agenda binder will be recirculated to the Regional Board Members.

III. NATURE OF HEARING

This proceeding will be a formal adjudicatory proceeding pursuant to section 648 *et seq.* of Title 23 of the California Code of Regulations. Chapter 5 of the California Administrative Procedure Act (commencing with section 11500 of the Government Code) relating to formal adjudicative hearings does not apply to adjudicative hearings before the Regional Board, except as otherwise specified in the above-referenced regulations.

IV. AVAILABILITY OF DOCUMENTS

The Tentative Waste Discharge Requirements, Tentative Monitoring and Reporting Programs, Fact Sheet, Administrative Record Index, and other information and documents relied upon are posted on the Regional Board's website at:

www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/index.shtml.

These documents are also available for inspection and copying between the hours of 8:00 a.m. and 4:30 p.m. at the following address:

California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Arrangements for file review and/or obtaining copies of documents in the Administrative Record may be made by calling the Los Angeles Regional Board at (213) 576-6600. Responses to

comments and other subsequent relevant documents will be available online as they are generated.

All the materials identified in the Administrative Record Index will be included in the Administrative Record of this proceeding, irrespective of whether individual documents are specifically referenced during the hearing or contained in the agenda packet. However, the entire Administrative Record may not be present at the hearing. Should any parties or interested persons desire Regional Board staff to bring to the hearing any particular documents in the Administrative Record they must submit a written or electronic request to the Regional Board staff member identified in section X. below no later than **5:00 pm on June 17, 2010**. The request must identify the documents with enough specificity for Regional Board staff to locate them.

V. PARTICIPANTS TO THIS HEARING

Participants in this proceeding are identified as either “Parties” or “Interested Persons.” Designation as a Party is not necessary to participate in this proceeding. Both Interested Persons and Parties will have the opportunity to present written and/or oral comments about the proposed modifications to the Ventura County MS4 Permit. Both Interested Persons and Parties may be asked to respond to clarifying questions from the Regional Board, staff or others, at the discretion of the Regional Board.

A. Interested Persons

Interested persons include any person or organization that is interested in the outcome of the hearing, but who has not been designated as a party. Interested persons may present written and/or oral comments, as provided in Section VI. below, but they may not present evidence. Interested persons are not subject to cross-examination and may not cross-examine witnesses.

B. Parties

Parties are those persons or organizations anticipated to have the greatest interest in the outcome of the hearing. They are generally expected to take a leadership role in presenting any evidence or argument about the nature of the matter under consideration. Parties to the hearing may submit written evidence, summarize their evidence orally at the hearing, or cross-examine other parties’ witnesses (if any are called). Parties are subject to cross-examination about any evidence they present.

The following are the parties to this proceeding:

1. The County of Ventura Watershed Protection District
2. The County of Ventura
3. Cities of Camarillo, Fillmore, Moorpark, Ojai, Oxnard, Port Hueneme, San Buenaventura (Ventura), Santa Paula, Simi Valley and Thousand Oaks
4. NRDC and Heal the Bay¹

¹ NRDC and Heal the Bay are hereby included as parties to this proceeding since both organizations were designated as additional parties to the May 7, 2009 proceeding whereby the Regional Board adopted the Ventura County MS4 Permit that is being reconsidered in this proceeding.

Any other persons or organizations who wish to participate in the hearing as a party shall request party status by submitting a written or electronic request to the Regional Board (as provided in Section X. below) no later than **5:00 pm on June 7, 2010**. All requests for designation as a party shall include the name, phone number, and email address of the person who is designated to receive notices about this proceeding. The request shall also include a statement explaining the reasons for their request (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Board affect the person), and a statement explaining why the parties designated above do not adequately represent the person's interest. Determinations will be based on whether their participation as a party will further the development of the issues before the Regional Board. Those submitting requests for party status will be notified before the hearing whether the request is granted or denied. All parties will be notified if other parties are designated.

C. Regional Board Staff

Regional Board staff is not a party to this proceeding. This is a proceeding to reconsider adoption of a permit, which does not involve investigative, prosecutorial, or advocacy functions. Staff's proposals, recommendations, and their participation in this proceeding exist for the purpose of advising and assisting the Regional Board. Likewise, attorneys for the Regional Board will advise and assist the Regional Board, which includes the board members and its entire staff. Given the nature of this proceeding and the limited facts in dispute, assigning a separate staff to "advocate" on behalf of a particular position would not further the development of the issues before the Regional Board.

VI. PUBLIC COMMENTS AND SUBMITTAL OF EVIDENCE

Persons wishing to comment on the underline and strikeout provisions of the proposed Ventura County MS4 permit, or submit evidence for the Regional Board to consider, are invited to submit them in writing. To be evaluated and responded to by Regional Board staff, included in the Regional Board's agenda binder, and fully considered by the Regional Board members in advance of the hearing, all written comments and evidence must be submitted to the Regional Board, as provided in Section X. below, and received at the Regional Board office no later than **5:00 pm on June 7, 2010**. Written comments submitted through email are requested to be transmitted in Microsoft Word format.

Pursuant to section 648.4, Title 23 of the California Code of Regulations, untimely submittal of written comments or evidence will not be allowed or accepted into the Administrative Record without a showing of good cause for the delay, and in no event if any party would be unduly prejudiced by the late submittal or if staff or the Regional Board would not have an adequate opportunity to review, consider, and respond to the comments or evidence.

VII. *EX PARTE* COMMUNICATIONS PROHIBITED

Parties and interested persons are forbidden from engaging in *ex parte* communications regarding this matter with members of the Regional Board. An *ex parte* communication is a communication not authorized in the California Government Code, to a Regional Board member from any person, about a pending matter, that occurs in the absence of other parties and

without notice and opportunity for the parties to respond. The California Government Code generally prohibits the board members from engaging in *ex parte* communications during permitting, enforcement, or other “quasi-adjudicatory” matters. As a permitting proceeding, Regional Board members may not discuss the subject of this hearing with any person, except during the public hearing itself, except in the limited circumstances and manner described in this notice.

VIII. HEARING PROCEDURES

Adjudicative proceedings before the Regional Board generally will be conducted in the following order:

- Administration of oath to persons who intend to testify
- Regional Board staff presentation
- Interested persons’ comments
- Designated parties’ presentation
- Questions from the Regional Board to parties
- Questions from the Regional Board to Staff
- Deliberations (in open or closed session)
- Regional Board decision

While this is a formal administrative proceeding, the Regional Board does not generally require the cross examination of witnesses, or other procedures not specified in this notice, that might typically be expected of parties in a courtroom. Each party will be advised after the receipt of public comments, but prior to the date of the hearing, of the amount of time the party will be allocated for its presentations. That decision will be based upon the complexity and the number of issues under consideration, the extent to which the parties have coordinated, the number of parties and interested persons anticipated, and the time available for the hearing. The parties should contact the Regional Board staff, as provided in section X. below, not later than **5:00 pm on June 10, 2010** to state how much time they believe is necessary for their presentations. It is the Regional Board’s intent that reasonable requests be accommodated.

Interested persons are invited to attend the hearing and present oral comments. Oral comments may be limited to 3 to 5 minutes each for their comments, in the discretion of the Chair, depending on the number of persons wishing to be heard. Parties and interested persons with similar concerns or opinions are encouraged to choose one representative to speak, and are encouraged to coordinate their presentations with each other. Repetitive comments will not be allowed. The Regional Board will include in the Administrative Record written transcriptions of oral testimony or comments that are made at the hearing.

IX. OBJECTIONS TO MANNER OF HEARING

Parties or interested persons with procedural requests different from or outside of the scope of this notice should contact the Regional Board staff member identified in section X. below no later than **5:00 pm on June 10, 2010**. The Regional Board will endeavor to accommodate reasonable requests.

Objections to (a) any procedure to be used or not used during the hearing, (b) any document or evidence in the administrative record, or (c) any other matter set forth in this notice, must be submitted in writing and received by the Regional Board staff member identified in section X. below no later than **5:00 pm on June 7, 2010**. Any objections related to the amount of time allocated for parties' presentations must be submitted within two business days of notice thereof.

Untimely objections will be deemed waived. Procedural objections about the matters contained in this notice will be addressed prior to and will not be entertained at the hearing. Further, except as otherwise stipulated, any procedure not specified in this hearing notice will be deemed waived pursuant to section 648(d) of Title 23 of the California Code of Regulations, unless a timely objection is filed.

X. REGIONAL BOARD STAFF CONTACTS

Any communications with the Regional Board prior to the hearing should be directed to:

Mr. Ivar Ridgeway
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(213) 620-2150
iridgeway@waterboards.ca.gov

Please submit electronic comments to: July082010VCMS4@waterboards.ca.gov.

Date: May 5, 2010